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Nos. 86-509 and 86-564

In the Supreme Court of the United States

OCTOBER TERM, 1986

Supreme Court, U.S.
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OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

BEATY MAE GILLIARD, ET AL.

PHILLIP J. KIRK, SECRETARY, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL., APPELLANTS

v.

BEATY MAE GILLIARD, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE FEDERAL APPELLANT

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QUESTION PRESENTED

Whether Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(38), which provides that all parents, brothers and sisters who live together shall constitute a single filing unit for the Aid to Families with Dependent Children program, is unconstitutional as violative of the Takings Clause, the Due Process Clause or the Equal Protection component of the Fifth Amendment.

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE FEDERAL APPELLANT

OPINIONS BELOW

The decision of the district court holding the relevant provisions of the Social Security Act unconstitu-

tional is reported at 633 F. Supp. 1529 (J.S. App. 13a-92a).[1] Subsequent decisions and orders of the district court are unreported (J.S. App. 1a-12a, 98a-109a).

JURISDICTION

The judgment of the district court (J.S. App. 93a) was entered on July 14, 1986. The decision of the district court denying motions for reconsideration was entered on August 25, 1986 (J.S. App. 106a-109a). A notice of appeal to this Court was filed on July 29, 1986, and an amended notice of appeal was filed on September 16, 1986 (J.S. App. 94a-97a). The jurisdictional statement in No. 86-509 was filed on September 26, 1986. The jurisdictional statement in No. 86-564 was filed on September 29, 1986. On December 8, 1986, the Court noted probable jurisdiction and consolidated the two cases for argument. The jurisdiction of this Court rests on 28 U.S.C. 1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution provides in pertinent part:

> [N]or shall any person be * * * deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(38), provides in pertinent part:

> A State plan for aid and services to needy families with children must—
>
> * * * * *

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[1] "J.S. App." refers to the appendix to the jurisdictional statement in No. 86-509.

provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title, if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter) * * *.

Section 402(a)(8)(A)(vi) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(8)(A)(vi), provides in pertinent part:

A State plan for aid and services to needy families with children must—

* * * * *

provide that, with respect to any month, in making the determination under paragraph (7), the State agency—

* * * * *

(vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title) * * *.

Section 457(b)(1) of the Social Security Act, 42 U.S.C. (Supp. III) 657(b)(1), provides in pertinent part:

> The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:
>
> > (1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month * * *.

STATEMENT

This case involves a constitutional challenge to one of several statutory amendments made to the Aid to Families with Dependent Children (AFDC) program in 1984. Those statutory changes were designed to allocate finite federal resources to those families that are most in need of financial help. Perceiving certain shortcomings in the pre-existing structure of the AFDC program, Congress sought to modify the program in a way that more realistically reflects the actual fiscal situation of families that are candidates for public assistance. As a result of those amendments, some families no longer qualify for AFDC benefits and other families receive smaller grants.

Appellees are members of families whose AFDC benefits were diminished, interrupted, or terminated in accordance with the 1984 amendments. In this suit, appellees challenge the constitutionality of the statutory provision that requires all parents, brothers and sisters who reside together to be considered as a family filing unit for AFDC purposes. 42 U.S.C.

(Supp. III) 602(a)(38). The district court declared this statute unconstitutional and enjoined its enforcement. The court reasoned that the statute violates the Takings Clause of the Fifth Amendment by denying minor siblings the right to enjoy unrestricted access to their separate income. The court also held that the statute violates the Due Process Clause by creating a classification that discriminates against family members and that burdens family decisions to live together.[2]

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[2] The only court of appeals that has considered the question has rejected constitutional challenges to the statute at issue here. See *Gorrie* v. *Bowen*, No. 85-5394 (8th Cir. Jan. 16, 1987), rev'g 624 F. Supp. 85 (D. Minn. 1985); *White Horse* v. *Bowen*, No. 86-5005 (8th Cir. Jan. 16, 1987), rev'g 627 F. Supp. 848 (D.S.D. 1985). Most district courts likewise have upheld the statute. See *Bradley* v. *Austin*, No. 86-175 (E.D. Ky. Jan. 5, 1987); *Childress* v. *Hill*, No. 85-Z-1459 (D. Colo. Jan. 21, 1986), appeal pending, No. 86-1514 (10th Cir.); *Creaton* v. *Heckler*, 625 F. Supp. 26 (C.D. Cal. 1985) (denial of preliminary injunction), No. CV-85-3306-R (May 16, 1986) (decision on the merits); *Huber* v. *Blinzinger*, 626 F. Supp. 30 (N.D. Ind. 1985); *Maryland Dep't of Human Resources* v. *United States Dep't of Health & Human Services*, No. M-86-605 (D. Md. Apr. 22, 1986), appeal pending, No. 86-3076 (4th Cir.); *Rosado* v. *Bowen*, No. H-85-171(JAC) (D. Conn. Oct. 9, 1986); *Oliver* v. *Ledbetter*, 624 F. Supp. 325 (N.D. Ga. 1985), appeal pending, No. 86-8037 (11th Cir.); *Sherrod* v. *Hegstrom*, 629 F. Supp. 150 (D. Or. 1985), appeal pending, No. 86-3632 (9th Cir.); *Shonkwiler* v. *Heckler*, 628 F. Supp. 1013 (S.D. Ind. 1985) (denial of preliminary injunction), No. IP 84-1612-C (Aug. 11, 1986) (decision on the merits), appeal pending, No. 86-268 (7th Cir.); *Showers* v. *Cohen*, 645 F. Supp. 217 (M.D. Pa. 1986), appeal pending, No. 86-5795 (3d Cir.); *Van Berg* v. *Shinpoch*, No. C85-2069C (W.D. Wash. Apr. 18, 1986), appeal pending, No. 86-3870 (9th Cir.); *Van Horn* v. *Hegstrom*, No. 85-1768RE (D. Or. Feb. 20, 1986). Accord, *Park* v. *Coler*, 493 N.E.2d 130 (Ill. 1986) (federal government not a party). Two district courts,

A. THE AFDC PROGRAM

1. Congress established the AFDC program in 1935. Social Security Act, ch. 531, Tit. IV, §§ 401-406, 49 Stat. 627-629, 42 U.S.C. (& Supp. III) 601-676. The program is designed to provide financial assistance to needy families with dependent children. A "dependent child" is a needy child who has been deprived of parental care or support by the death, incapacity or "continued absence from the home" of a parent (42 U.S.C. 606(a)).[3]

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aside from the court below, have held the statute unconstitutional. *Lesko* v. *Bowen*, 639 F. Supp. 1152 (E.D. Wis. 1986) (granting preliminary injunction), direct appeal docketed, No. 86-744 (Nov. 5, 1986); *Baldwin* v. *Ledbetter*, 647 F. Supp. 623 (N.D. Ga. 1986), direct appeal docketed, No. 86-1140 (Jan. 9, 1987), stay pending appeal granted, No. A-448 (Dec. 18, 1986) (Powell, Circuit Justice). Two district courts have invalidated the regulatory scheme without deciding its constitutionality. See *Johnson* v. *Cohen*, No. 84-6277 (E.D. Pa. Jan. 10, 1986), appeal pending, No. 86-1101 (3d Cir.); *Elam* v. *Barry*, No. C-1-86-142 (S.D. Ohio Dec. 31, 1986). Preliminary injunctions have been granted in favor of plaintiffs on statutory rather than constitutional grounds in *Frazier* v. *Pingree*, 612 F. Supp. 345 (M.D. Fla. 1985); *Lee* v. *Pingree*, No. 85-644-Civ.-T-15 (M.D. Fla. Feb. 13, 1986); *Gibson* v. *Sallee*, No. 3-85-1283 (M.D. Tenn. Mar. 6, 1986); *Howell* v. *Bowen*, No. 86-0677L (D.R.I. Nov. 13, 1986); *Short* v. *Heckler*, No. C85-2248 (W.D. Wash. Jan. 6, 1986); *Collins* v. *Barry*, 644 F. Supp. 249 (N.D. Ohio 1986) (federal government not a party). A preliminary injunction was denied in *Ardister* v. *Mansour*, 627 F. Supp. 641 (W.D. Mich. 1986).

[3] When originally enacted, the program was entitled "Aid to Dependent Children." 49 Stat. 627. In 1962, Congress changed the title to "Aid and Services to Needy Families with Children" to reflect more accurately the character of the program. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 104(a)(1), 76 Stat. 185; see S. Rep. 87-1589, 87th Cong., 2d Sess. 14 (1962).

In order to qualify for AFDC benefits, a family must meet certain standards of financial need, determined by its income and resources. 42 U.S.C. (Supp. III) 602(a). Each state establishes a statewide standard of need, "which is the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974); see 42 U.S.C. (Supp. III) 602(a)(23). Further, each state specifies "how much assistance will be given, that is, what 'level of benefits' will be paid." *Rosado* v. *Wyman*, 397 U.S. 397, 408 (1970). The states have " 'broad discretion in determining both the standard of need and the level of benefits.' " *Heckler* v. *Turner*, 470 U.S. 184, 189 n.3 (1985) (quoting *Shea* v. *Vialpando*, 416 U.S. at 253). A family is eligible for AFDC benefits if its countable income and resources do not exceed state-specified limits, subject to federally-prescribed maximums. 42 U.S.C. (Supp. III) 602(a)(7)(B), (8) and (17).[4] The amount of benefits paid to the family is based upon the difference between the family's countable income and the benefit level established by the state for a family of that size.[5]

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[4] We use the term "countable income" to reflect the fact that the states must exclude certain monetary receipts from income for purposes of determining a family's AFDC eligibility and benefits. For example, in determining the countable income of an AFDC family, the state must disregard income earned from part-time employment by a dependent child who is also a full- or part-time student (42 U.S.C. (Supp. III) 602(a)(8)(A)).

[5] At its option, a state may provide additional assistance for certain "special needs." 45 C.F.R. 233.20(a)(2)(v). Such "special needs" payments may cover such circumstances as special nutritional needs or diets, utilities, transportation, education, day care, pregnancy-related needs, clothing, and catastrophic events. Thirty states, the District of Columbia

Prior to 1984, the statute "d[id] not define what constitutes an AFDC family." Staff of House Comm. on Ways and Means, 98th Cong., 2d Sess., *WMCP: 98-24, Description of the Administration's Fiscal Year 1985 Budget Recommendations Under the Jurisdiction of the Comm. on Ways and Means* 29 (Comm. Print 1984) [hereinafter *WMCP:98-24*]. Nor did the statute require that all family members residing together be included in the "filing unit" for AFDC purposes. Prior to 1984, therefore, a family applying for AFDC assistance could have excluded from the filing unit those members with income that, if counted in the eligibility determination, would have reduced the amount of the family's AFDC benefits or would have terminated its eligibility. I Senate Comm. on Finance, 98th Cong., 2d Sess., *S. Prt. 98-169, Deficit Reduction Act of 1984*, at 980 (Comm. Print 1984) [hereinafter *S. Prt. 98-169*]. Moreover, in anticipation that one of its members was about to receive additional income, a family could have removed that member from the AFDC filing unit, thus enabling the remaining family members to continue to qualify for benefits.

2. In 1984, Congress established a standard filing unit for the AFDC program. This result was accomplished by amending the statute explicitly to require that a parent and all siblings who reside with a dependent child be included in the filing unit when a family seeks or receives AFDC benefits. Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369,

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and Guam have chosen to make AFDC "special needs" payments. See generally Office of Family Assistance, Social Security Administration, U.S. Dep't of Health & Human Services, *Characteristics of State Plans for Aid To Families With Dependent Children Under the Social Security Act Title IV-A* (1986).

§ 2640(a), 98 Stat. 1145, 42 U.S.C. (Supp. III) 602 (a)(38). The Senate Finance Committee explained the purpose of this amendment as follows (*S. Prt. 98-169*, at 980):

> *Present Law*
>
> There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. For example, a family might choose to exclude a child who is receiving social security or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child.
>
> * * * * *
>
> *Explanation of Provision*
>
> The provision approved by the Committee would require States to include in the filing unit the parents and all dependent minor siblings (except SSI recipients and any stepbrothers and stepsisters) living with a child who applies for or receives AFDC. * * *
>
> This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole.

The committee estimated that this change would save $455 million during 1984-1987 (*S. Prt. 98-169*, at 981). See 130 Cong. Rec. S4099 (daily ed. Apr. 9, 1984) (remarks of Sen. Dole).

In proposing this amendment, the Secretary explained that adoption of a standard filing unit would "result in payment of AFDC that much more realistically reflects the actual home situation" (Letter from Secretary Heckler to Vice President Bush (May 25, 1983) (J.A. 168-169)). In adopting the Secretary's proposal, Congress recognized that family members who live together generally share their income and expenses, and hence that a family including a member with separate countable income is less needy than a comparable family in which no member has any (or as much) such income. *S. Prt. 98-169*, at 980. Under the law as amended in 1984, therefore, all persons listed in the DEFRA amendment must be included in the filing unit when a family applies for AFDC. The countable income received by all such persons is then aggregated in determining the family's eligibility for benefits and the level of benefits that it will receive if eligible.[6]

The effect of the 1984 amendment may be illustrated by a simplified example. Assume a family of four, consisting of three children and one parent, and assume that one of the children has separate countable income of $200 per month, representing the family's only income. Prior to the 1984 amendment, the family could have excluded that child from the filing unit.

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[6] The Secretary promulgated the following regulation (45 C.F.R. 206.10(a)(1)(vii)) to implement the filing-unit amendment:

> For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> (A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and
>
> (B) Any blood-related or adoptive brother or sister.

The family would then have constituted a filing unit of three (one parent and two children) with no income, and it would have received the maximum AFDC benefit for a family of that size, perhaps $250. Thus, when the excluded child's separate income was added in, the aggregate monthly income of all members of the family would have been $450 ($250 in AFDC benefits plus $200 separate income).

Under the statute as amended in 1984, by contrast, the family, if it chooses to apply for AFDC assistance, must include the income-receiving child in the filing unit (42 U.S.C. (Supp. III) 602(a)(38)). It is now a filing unit of four (one parent and three children) with a monthly income of $200. If the state-prescribed maximum grant for a family of that size is $300 per month, the monthly AFDC benefits would be $100 ($300 minus $200) which, when added to the child's income, brings the family up to the state's maximum grant level ($300).

3. In amending the statute in 1984, Congress specified a slightly different scheme where the child's separate income takes the form of child-support payments. This difference results principally from three statutory provisions: Section 602(a)(26)(A), enacted in 1975, which requires AFDC applicants as a condition of eligibility to assign to the state any accrued right to child support; and Sections 602(a)(8)(A)(vi) and 657(b)(1), enacted as part of the 1984 amendments, which provide that the first $50 of monthly child support collected by the state is to be remitted to the family and not counted in determining its AFDC eligibility. The net effect of these three provisions is that, under the DEFRA filing-unit rule, families whose members receive child-support income are never worse off, and will typically be up to $50 a month

better off, than comparable families whose members receive other types of countable income.

Congress enacted the child-support assignment provision in 1975 in order to remedy widespread noncompliance with parental support obligations. As early as 1950, Congress had implemented various measures aimed at "securing support from the deserting or abandoning parent in every possible case." H.R. Rep. 90-544, 90th Cong., 1st Sess. 100 (1967); see Social Security Act Amendments of 1950, ch. 809, § 321(b), 64 Stat. 549-550. Those measures did not produce the desired results. By 1974, the problem of support-payment delinquency had reached the point where almost 25% of AFDC children were covered by support orders, but few of these orders were obeyed even though absent parents had the ability to pay. See S. Rep. 93-1356, 93d Cong., 2d Sess. 42-44 (1974); 120 Cong. Rec. 38196-38198 (1974) (remarks of Rep. Griffiths). Congress concluded in 1974 that "[t]he problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents" (S. Rep. 93-1356, *supra*, at 42), and that the AFDC program in particular had evolved into a publicly-funded substitute for unenforced parental support obligations.

Among the remedies that Congress implemented in 1975 to address this problem was a provision that requires an AFDC applicant, as a condition of eligibility, to assign to the state any accrued right to child support that she or her children may possess. Social Services Amendments of 1974, Pub. L. No. 93-647, § 101(c)(5)(C), 88 Stat. 2359, 42 U.S.C. 602(a)(26)(A). The purpose of this provision was to relieve the deserted mother of the burden of enforcing the abandoning father's child-support obligations, and to transfer that burden to the states with their greater

resources and better collection techniques. See *Sorenson* v. *Secretary of the Treasury*, No. 84-1686 (Apr. 22, 1986), slip op. 1-2. The assignment provision of course worked no financial detriment to the AFDC family. Previously, any child support actually received by an AFDC recipient would have been counted as income, and the family's AFDC benefits would have been *reduced* by an identical amount. When child support is assigned to the state, the family's countable income is accordingly reduced, and its AFDC benefits are *increased* by an identical amount. The enactment of the assignment provision in 1975 thus created no substantive distinction between child support and other income for AFDC purposes. It simply established a different procedural mechanism by which child support was to be taken into account in determining AFDC eligibility and benefits levels.

From 1975 to 1984, the assignment provision operated only when a family applying for AFDC benefits chose to include in the filing unit the child who received the support payments.[7] Congress did not

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[7] Such a child was typically included in situations like the following: (1) when the support payment was smaller than the increase in AFDC benefits that the family would realize by applying as a larger filing unit; (2) when the non-custodial parent was delinquent or irregular in making child-support payments and the family concluded that it could maximize total income by including the child in the filing unit; and (3) when the child-support recipient was likely to incur substantial medical bills. In the latter situation, the family might have chosen to include the child-support recipient in its AFDC filing unit in order to obtain Medicaid benefits for that child as one who was "categorically needy," that is, as someone automatically entitled to Medicaid benefits without having to incur medical expenses in excess of the state's "spenddown" amount. See generally *Atkins* v. *Rivera*, No. 85-632 (June 23, 1986), slip op. 2-3.

amend the assignment provision in 1984. The effect of Congress's adoption of the standard filing unit in 1984, however, was that all minor siblings residing together must now be included in the filing unit; that all countable income of such children must now be considered in determining the family's AFDC benefits; and that, where such income consists of child support, an assignment to the state of all child support is now required as a condition of AFDC eligibility.

Congress recognized in 1984 that the child support assigned to the state in consequence of the new filing-unit provision might sometimes be greater than the marginal increase in AFDC benefits obtained by the family by filing as a larger unit. To mitigate that potential disadvantage, Congress added two companion provisions to the statute in 1984. Pub. L. No. 98-369, § 2640(b)(1) and (c), 98 Stat. 1145-1146, 42 U.S.C. (& Supp. III) 602(a)(8)(A)(vi) and 657(b)(1). Those sections provide that the first $50 of any monthly child support collected by the state pursuant to the assignment provision is to be paid by the state directly to the child's caretaker relative, and that this $50 is to be disregarded in determining the family's AFDC eligibility and benefits.

The effect of these latter amendments may again be illustrated by an example. Assume the same family of four described in the example above, and assume that the child's $200 monthly income consists entirely of child support. Under the amended statute, that child would be included in the family filing unit for AFDC purposes; the $200 monthly child support would be assigned to the state; the first $50 of child support collected by the state would be remitted to the family; that $50 would be disregarded in determining the family's income for AFDC purposes; and the

family would be treated as a filing unit of four with no income, entitling it to $300 in monthly benefits. Unlike the family described in our earlier example, however, the family that assigned its child support would have an aggregate monthly income of $350 ($300 AFDC benefits and the additional $50 remitted from the state). Thus, while the assignment provision establishes a different procedural mechanism when a family member receives countable income in the form of child support, the resulting economic impact on the family is precisely the same as if that income had been derived from any other source, *except* that the family is also entitled to receive up to $50 extra from the state each month—a distinction that augments the family's income.

B. PROCEEDINGS IN THIS CASE

1. This case had its origin in a challenge to the operation of the AFDC program in North Carolina long before DEFRA was enacted. In 1971, a three-judge court invalidated a state rule that required child-support income to be considered a family resource when computing the family's eligibility for AFDC benefits; the court held that the rule was inconsistent with the federal statutory scheme then in effect and enjoined the rule's enforcement. *Gilliard* v. *Craig*, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807 (1972). Following the enactment of DEFRA and the promulgation of federal and state implementing regulations, appellees here, stating that they were members of the class certified by the district court in 1971, filed a motion for further relief asking the district court to enforce its 1971 injunction. The State of North Carolina filed a third-party complaint against the Secretary, contending

that the State's current rules comply with the federal regulations implementing the DEFRA filing-unit amendment, and contending that, if the State were found liable, the United States should be required to share in the payment of any AFDC benefits awarded.

2. On May 7, 1986, the district court issued its decision holding the DEFRA filing-unit provision unconstitutional (J.S. App. 13a-92a). The court first addressed appellees' statutory-construction arguments, the gist of which was that children who receive child support are not "needy" or "dependent" children, and hence that Congress had not intended to mandate their inclusion in the AFDG filing unit. See J.S. App. 48a-49a. The court rejected these arguments, concluding that the legislative history "clearly shows that the intent of the DEFRA amendment is to measure need by assessing the aggregated resources of all family members [and that] the option of choosing which members of a family may be included in the assistance unit is no longer available" (*id.* at 48a-49a). The court likewise rejected appellees' contention that state law would be violated if child-support income were counted as "a family financial resource," a contention based on the theory that North Carolina law permits a mother to spend such income "only on the child for whom the support has been obtained" (*id.* at 54a, 56a). The district court concluded that Congress's clear intent to include child support in AFDC calculations preempted state laws to the extent that they treated such income as the exclusive property of the child (*id.* at 52a, 59a-60a).

The court then proceeded to hold the statute unconstitutional (J.S. App. 61a-92a). First, the court concluded that the requirement that an AFDC applicant assign child-support income to the state effected a taking of private property without just compensation.

The "taking" that the court identified was the child's loss of "the right to enforce the fiduciary obligation that prohibited the mother from spending the money on anyone other than the designated child" (*id.* at 67a). The court recognized that, under the AFDC statutory scheme, "the child receiving child support income remains entitled to the full child support amount, as evidenced by the state's acquired right to institute legal action against a father who does not pay" (*ibid.*). But the court concluded that "the child can only maintain *unrestricted access* to the money if [he] lives in a household separate from his or her mother and half-brothers and sisters" (*ibid.* (emphasis in original)). The court regarded this economic effect as tantamount to depriving child-support recipients of "exclusive use of their money * * * on the basis of the composition of their family," theorizing that such children were required "to contribute a significant portion of their income to the state in the name of their needy half-siblings in order to reduce state and federal AFDC expenditures" (*id.* at 68a-69a (emphasis omitted)). The court characterized this statutory scheme as effecting a taking of private property for public use without just compensation (*id.* at 66a-69a) and "an unconstitutional tax on the supported child's membership in a particular type of family unit" (*id.* at 61a, 74a).

The district court also found the 1984 filing-unit amendment to violate principles of equal protection and substantive due process (J.S. App. 70a-89a). In this connection, the court concluded that it should impose a more rigorous degree of scrutiny than is ordinarily applicable to legislative decisions concerning the allocation of public welfare benefits. In the court's view, appellees did not simply challenge a govern-

mental decision to reduce AFDC benefits, but rather challenged "a governmental decision to intercept the delivery of *private* property, [namely,] the full child support amount ordinarily available from the father" (*id.* at 55a (emphasis in original)). "The impact of [Congress's] action on the child's fundamental associational rights and on a property right," the district court stated, "requires a more rigorous examination than [appellants] suggest" (*ibid.*).

Asserting that DEFRA's filing-unit provision strains a mother's ability to keep her family intact and causes "family income [to be] reduced from its already meager levels," the district court held that the statute unconstitutionally burdens family relationships (J.S. App. 78a). Relying on affidavits filed by appellees, by an urban anthropologist, and by a state judge, the court explained that the filing-unit amendment would "undoubtedly test these mothers' capacity to cope" and could cause the child and his mother to "lose access to the father's kin network" (*id.* at 79a). While acknowledging that the congressional objective of conserving limited fiscal resources is a legitimate one, the court held that "[t]he Constitution's consistent recognition and protection of family associational rights prevent the state and federal governments from using children's unchosen membership in a family that includes AFDC dependent half-sisters and brothers as the justification for the deprivation of property" (*id.* at 89a).

On July 3, 1986, the district court issued a final order enjoining the Secretary from "requiring state defendants mandatorily to include the parent and all children living in the household in the assistance unit and from requiring child support income received from the legally obligated parent of one of the children to be included in determining financial eligibility for

the rest of the family members" (J.S. App. 6a). The court also issued, on the same day, an order in response to the Secretary's motion for clarification. In that order, the court stated that it "finds the statute unconstitutional because it imposes a financial penalty on children receiving adequate child support" and that "[s]uch a deprivation of property based on a child's unchosen family membership violates due process and equal protection principles, as explained at length in the memorandum of decision" (*id.* at 8a).

On August 25, 1986, the district court denied motions for reconsideration in light of this Court's decision in *Lyng* v. *Castillo*, No. 85-250 (June 27, 1986). In *Castillo*, this Court reversed a district court decision which had held that a provision of the Food Stamp Act allocating benefits on the basis of single households composed of parents, children or siblings unduly burdened family associational rights and hence violated the equal protection component of the Due Process Clause. The district court below, in denying the motions for reconsideration, concluded that *Castillo* did not control the instant litigation. It stated that the classification here unduly penalizes persons "who are not free to change their living arrangements to preserve or augment their income," and it characterized the statute as confronting children with an unconstitutional choice "between parental relationships and financial survival" (J.S. App. 109a).

SUMMARY OF ARGUMENT

The district court has declared unconstitutional a carefully-considered statute designed to remedy a flaw in the AFDC eligibility scheme. The court's errors are largely traceable to its failure to perceive two propositions that we believe central to the proper resolution of this case. First, the family filing-unit

provision merely establishes a condition of eligibility for a public assistance program in which participation is voluntary. Second, the filing-unit provision does not discriminate against families that receive child support rather than some other form of income.

1. Congress decided in 1984 to ensure "that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole" (*S. Prt. 98-169*, at 980). Faced with the task of allocating finite government funds among a large number of potential recipients, a task made more difficult by an "overwhelming deficit crisis" (*ibid.*), Congress simply closed an existing loophole in the AFDC benefits scheme. It reasonably concluded that closely-related family members who reside together are likely to share the expense of common necessities and should be regarded as a single family unit.

That legislative determination, contained in the standard filing-unit provision, makes no distinction based on the source of countable income received by family members. *All* countable income received by a co-resident parent, brother or sister is to be taken into account in determining the level of benefits to which that family unit is entitled. The economic consequences of this provision are not affected by the source of the family's countable income, with one exception. If the otherwise countable income is received in the form of child-support payments, the first $50 of that income is disregarded in AFDC benefits calculations. Hence, an AFDC family that includes a child receiving monthly support payments of $50 or more will end up with $50 more in total income (after AFDC benefits are received) than a comparable family whose countable income is received from some other source.

2. The district court held nonetheless that the treatment of child-support payments under the amended statute effected a "taking" of private property in violation of the Fifth Amendment. That holding was based, not on Congress's redefinition of the filing unit in 1984, but on an entirely separate provision, enacted in 1975 (42 U.S.C. (& Supp. III) 602 (a)(26)(A)), that establishes "as a condition of eligibility for aid" that any applicant for AFDC benefits who has a right to support must assign that right to the state. To be sure, the assignment provision employs different procedural steps to take account of child-support income than are employed for other sorts of countable income. But though the procedures differ, no economic disadvantage is thereby visited upon the AFDC family. Other than the $50 disregard—which confers an added benefit on the family—the statutory treatment of child-support income through the assignment provision has the same impact on AFDC eligibility and benefits as any other countable income. After AFDC benefits are received, an AFDC family with child-support income has the same or higher level of total income as an AFDC family whose income derives from some other source. In the absence of any economic deprivation flowing from the challenged statute, there cannot be a "taking" within the meaning of this Court's decisions.

The district court's "taking" analysis is also flawed by its assumption that members of families with income near subsistence levels do not share the cost of obtaining life's necessities. In drafting the challenged statute, of course, Congress made precisely the opposite finding about the realities of family life, just as it had done in drafting the portions of the Food Stamp Act that this Court upheld in *Lyng*

v. *Castillo*. The district court rejected Congress's recognition of familial sharing, stressing instead the minor child's supposed property right under state law to have "exclusive" and "unrestricted" access to money paid as child support by his non-custodial parent (J.S. App. 69a, 67a). The district court's description of the family as a loose federation of autonomous economic entities is not only wrong as a matter of state law, it has no basis in common sense. And it reflects a marked lack of deference to "the duly enacted and carefully considered decision of a coequal and representative branch of our Government." *Walters* v. *National Association of Radiation Survivors*, No. 84-571 (June 28, 1985), slip op. 13.

3. The district court also erred in concluding that the DEFRA filing-unit provision is subject to heightened or "more rigorous" scrutiny under the Due Process Clause. As this Court held last Term in *Lyng* v. *Castillo*, family members do not constitute a "suspect" or "quasi-suspect" class. Furthermore, the statute does not burden any fundamental family rights. The economic effect of the filing-unit provision is that fewer public funds will be expended in making AFDC grants to some families—those with more countable income received by family members—than will be expended in making AFDC grants to families with less income. But that does not prevent any family members from living together. Indeed, that financial effect no more interferes with family choices than would any Congressional decision to cut benefit levels. The statute simply adjusts benefits in light of the cooperative arrangements that families generally can and do employ. The filing-unit provision is rationally related to the legitimate end of allocating public funds to those families that

are most in need, and it does not amount to a constitutionally significant intrusion on family living arrangements.

ARGUMENT

CONGRESS ACTED CONSTITUTIONALLY IN REQUIRING THAT ALL PARENTS, BROTHERS AND SISTERS WHO LIVE TOGETHER SHALL FILE AS A SINGLE FAMILY UNIT FOR AFDC PURPOSES

A. The Statute Requires That Siblings Who Receive Child Support Be Included In The AFDC Filing Unit, Regardless Of Such Siblings' Individual Needs for Assistance

1. Congress enacted the family filing-unit provision in 1984 to ensure that AFDC eligibility and benefits calculations realistically take into account all countable income received by family members who reside together. Confronting the need to allocate finite government funds among a rapidly growing number of potential recipients, a difficult task exacerbated by severe budget constraints, Congress sought to ensure "that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole" (*S. Prt. 98-169*, at 980).

Congress therefore amended the statute to provide (42 U.S.C. (Supp. III) 602(a)(38)) that, in ascertaining the need of a dependent child for AFDC assistance, the state must include in the eligibility determination "any brother or sister of such child," so long as that brother or sister "is living in the same home as the dependent child" and "meets the conditions described in clauses (1) and (2) of section 606(a) of this title." The condition described in Section 606(a)(1) is that the sibling must have "been deprived of parental support or care by reason of the

death, continued absence from the home * * *, or physical or mental incapacity of a parent" (42 U.S.C. 606(a)(1)). The condition described in Section 606 (a)(2) is that the sibling must be "under the age of eighteen" or, "at the option of the State, under the age of nineteen and a full-time student" (42 U.S.C. 606(a)(2)(A) and (B)).

Consistent with the language of the statute, the Secretary has promulgated a regulation specifying that, "in order for the family to be eligible" for AFDC benefits, "an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance: * * * [a]ny blood-related or adoptive brother or sister" (45 C.F.R. 206.10(a)(1)(vii)(B)). Under this regulation, a dependent child's co-resident minor siblings must be included in the AFDC filing unit regardless of whether or not they have separate income, and regardless of whether their separate income consists of child support or something else. Under well-settled principles of statutory construction, the reasonable interpretation of a statute by the agency to which Congress has entrusted the statute's administration is entitled to deference. *Atkins* v. *Rivera*, No. 85-632 (June 23, 1986), slip op. 7; *United States* v. *Riverside Bayview Homes, Inc.*, No. 84-701 (Dec. 4, 1985), slip op. 9-10, 17; *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1985); *American Paper Institute, Inc.* v. *American Electric Power Service Corp.*, 461 U.S. 402, 423 (1983); *Batterton* v. *Francis*, 432 U.S. 416, 426 (1977).

2. In the district court, appellees contended that Section 602(a)(38) should be construed so as not to require the inclusion in the filing unit of minor siblings who receive child support. Appellees advanced

three arguments to support this contention. The district court correctly rejected each argument.

First, appellees argued (J.S. App. 49a) that a sibling who receives child support is not "deprived of parental support" and hence does not meet the condition described in Section 606(a)(1). That subsection, however, describes inter alia a child who is "deprived of parental support *or care*" by reason of the "continued absence from the home * * * of a parent" (emphasis added). The district court correctly held that a child receiving child support is nevertheless "deprived of parental * * * care" (42 U.S.C. 606(a)(1)) because "he or she is not cared for by his or her absent father" (J.S. App. 49a).

Second, appellees argued (J.S. App. 48a) that a sibling who receives child support is not a "needy child" and hence is not a "dependent child" as defined in Section 606(a). Section 602(a)(38), however, does not mandate that a sibling be included in the filing unit only if he is a "dependent child" as defined in Section 606(a). Instead, Section 602(a)(38) mandates that a sibling be included if he resides with the family and "meets the conditions described in clauses (1) and (2) of section 606(a)." A child's "neediness" is not a condition described in either of those clauses. Rather, the words "needy child" appear only once in Section 606(a), namely, in the Section's preamble, which is anterior to and outside of clauses (1) and (2). See 42 U.S.C. 606(a) ("The term 'dependent child' means a needy child (1) who has been deprived of parental support or care * * * and (2) who is * * * under the age of eighteen * * *."). The district court thus correctly concluded (J.S. App. 49a) that the financial circumstances or "neediness" of an individual child—viewed in isolation—"are no longer determinative of that child's exemption from the

AFDC unit," but are now relevant in determining "the eligibility of his or her mother and half sisters or brothers for AFDC benefits." Accord, *e.g.*, *Gorrie* v. *Bowen*, No. 85-5394 (8th Cir. Jan. 16, 1987), slip op. 8.

Third, appellees argued (J.S. App. 49a) that, even if all co-resident siblings are generally includable in the AFDC filing unit, and even if such siblings' income should generally be considered in making AFDC eligibility determinations, Section 602(a)(38) should be construed to exempt child-support income from this calculus in order to avoid the constitutional problems supposedly generated by a literal construction of the statute. The district court recognized (J.S. App. 50a) that a court "has a duty, when possible, to construe a statute so as to avoid a constitutional question." But the court correctly refused to adopt the construction that appellees proffered, reasoning that to adopt their view would be "to ignore [the statute's] legislative history and to read it to be pointless legislation" (*ibid.*).

To begin with, the statutory language admits of no exception for child-support income. Rather, the statute provides that co-resident siblings shall be included in the filing unit and that "*any income* of or available for such * * * brother[] or sister *shall be included* in making [the AFDC eligibility] determination * * * with respect to the family" (42 U.S.C. (Supp. III) 602(a)(38) (emphasis added)). Where Congress has intended to create an exception for certain types of income, it has done so explicitly. For example, Section 602(a)(24) provides that the income of disabled children receiving SSI benefits is to be excluded in making the AFDC eligibility determination, and the legislative history of the 1984 amendments makes

it clear that Congress intended to preserve this exclusion. See *S. Prt. 98-169*, at 980.

Moreover, as the district court pointed out (J.S. App. 43a-50a), the legislative history plainly shows that Congress intended its filing-unit rule to incorporate no exception for child-support income. The Senate Finance Committee explained that whereas under preexisting law "a family might choose to exclude a child who is receiving * * * child support payments," the amendment "will end the present practice whereby families exclude members with income in order to maximize family benefits." *S. Prt. 98-169*, at 980; accord, *WMCP:98-24*, at 29. On each prior occasion that Congress had considered a filing-unit provision like that eventually enacted in 1984, it was clearly understood that the provision would eliminate the option of excluding child-support recipients from the AFDC filing unit.[8] The 1984 Conference Report

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[8] See, *e.g.*, Staff of Senate Comm. on Finance, 97th Cong., 2d Sess., *CP 97-11, Data and Materials for the Fiscal Year 1983 Finance Committee Report Under the Congressional Budget Act* 41 (Comm. Print 1982) ("Currently an AFDC family may choose to exclude from the AFDC unit any children who have significant income which might reduce the family's AFDC benefit. Most commonly, these are children receiving Social Security or child support income. Under the Administration's proposal, the needs and income of all related children (except SSI disabled children) would be considered in determining AFDC eligibility and benefits payments."); Staff of House Comm. on Ways and Means, 97th Cong., 2d Sess., *WMCP:97-31, Description of the Administration's Legislative Recommendations Under the Jurisdiction of the Committee on Ways and Means* 32-33 (Comm. Print 1982) ("Under the administration's proposal, the needs and income of all related children (except SSI disabled children) would be considered in determining AFDC eligibility and benefits amounts. This would include social security

adopted the Senate version of the amendment (the House bill had no comparable provision), and that report described the amendment as requiring states to include in the AFDC filing unit "the parents and *all* minor siblings living with a dependent child who applies for or receives AFDC." H.R. Conf. Rep. 98-861, 98th Cong., 2d Sess. 1407 (1984) (emphasis added). Finally, by expressly establishing a monthly "disregard of $50 of child support received by a family" (*ibid.*), the Conference Report makes it absolutely plain that Congress intended the newly-defined filing unit to include child-support recipients. Accord, *Gorrie* v. *Bowen*, slip op. 11.

In light of the statutory language, the supporting legislative history, and the Secretary's consistent interpretation, it is clear that Congress intended to include all co-resident minor siblings who receive child support in the AFDC family filing unit. The statutory language will not abide appellees' contrary construction. And, for the reasons that we now discuss,

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survivor's benefits and child support payments which are legally paid on behalf of a particular child."); 1 S. Rep. 97-494, 97th Cong., 2d Sess. 47 (1982) ("This change will end the present practice whereby families exclude members with income, such as social security or child support payments, in order to maximize family benefits, and will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole."); Staff of Senate Comm. on Finance, 98th Cong., 1st Sess., *S. Prt. 98-13, Data and Materials for the Fiscal Year 1984 Finance Committee Report Under the Congressional Budget Act* 50 (Comm. Print 1983); S. Rep. 98-300, 98th Cong., 1st Sess. 165 (1983); Staff of Senate Comm. on Finance, 97th Cong., 2d Sess., *CP 97-15, Background Data and Materials on Fiscal Year 1983 Spending Reduction Proposals Pending Before the Senate Finance Committee* 48-49 (Comm. Print 1982).

the plain-meaning construction of the statute does not pose any constitutional difficulties.

B. The Family Filing-Unit Provision Does Not Take Property In Violation Of The Fifth Amendment

Congress established the standard AFDC filing unit to end "the practice whereby families exclude members with income * * * in order to maximize family benefits" (1 S. Rep. 97-494, *supra*, at 47). The AFDC program provides for a "*family* grant" (*Dandridge* v. *Williams*, 397 U.S. 471, 477 (1970) (emphasis in original)), and Congress acted in 1984 to ensure that such *family* grants are allocated on the basis of aggregate *family* income. In holding that legislative determination to be violative of the Takings Clause, the district court employed an analysis that is incorrect at every turn. The court misperceived both the effect of the challenged government action and the nature of the interests involved.

1. The AFDC family filing-unit provision is grounded on the proposition that "families share their resources" (*Gorrie*, slip. op. 31). The reasonableness of this proposition is confirmed by this Court's decision last Term in *Lyng* v. *Castillo*, No. 85-250 (June 27, 1986), slip op. 5, 7 (holding that "Congress had a rational basis * * * for treating parents, children and siblings who live together as a single 'household' " for food-stamps purposes). Based on this eminently reasonable proposition, Congress determined that the most reliable index of a family's need for financial assistance is the aggregate income of the family members who reside together in the household. By standardizing the AFDC filing unit accordingly, Congress in 1984 merely closed certain benefit-maximizing op-

tions that, in Congress's view, had resulted in an inequitable distribution of welfare grants.

Congress's decision to eliminate a previous benefit-maximizing option for AFDC families no more constitutes a "taking" than would an amendment to the Internal Revenue Code that eliminated a previous deduction, exemption or credit. The only thing that Congress took away from appellees in 1984 was the opportunity to exclude from the filing unit a co-resident family member with separate income, and thereby to have that income ignored in determining the family's AFDC eligibility and benefits. That opportunity, wholly a creature of statute, conferred no property right and was always subject to repeal by Congress. See *Bowen* v. *Public Agencies Opposed to Social Security Entrapment*, No. 85-521 (June 19, 1986); *Connolly* v. *Pension Benefit Guaranty Corp.*, No. 84-1555 (Feb. 26, 1986).

The district court failed to recognize that the economic sum and substance of the 1984 amendment was a reduction in benefit levels in a social welfare program. See *Gorrie*, slip op. 31 ("the only actual loss from the Secretary's regulation and Section 602(a)(38) to families receiving or applying for AFDC is a reduction in AFDC assistance"). Congress, of course, has "plenary power to define the scope and the duration of the entitlement to [welfare] benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program." *Atkins* v. *Parker*, 472 U.S. 115, 129 (1985). Quite obviously, Congress could have chosen to save the $455 million expected to be saved by the filing-unit provision (*S. Prt. 98-169*, at 980) simply by enacting an across-the-board percentage reduction in all AFDC benefits, or by eliminating the program

entirely. Because there is no constitutionally-protected entitlement to receive a permanently-fixed welfare grant (see, *e.g.*, *Bowen* v. *Owens*, No. 84-1905 (May 19, 1986), slip op. 6), Congress's decision to cut benefits in that way would not have constituted a "taking." As it was, Congress decided to cut AFDC benefits in a more equitable and carefully-tailored way—by reducing benefits most to those families who, by virtue of their members' separate incomes, are relatively speaking least needy. It cannot seriously be contended that this approach effected a "taking" if Congress would have avoided a "taking" by employing a meat-ax instead of a scalpel.

2. In reaching the conclusion that appellees had suffered an unconstitutional "taking," the district court focused, not on the filing-unit provision that Congress enacted in 1984, but on the entirely separate assignment provision that Congress had enacted in 1975. As we have explained (pages 11-15, *supra*), the assignment provision, incorporated in Section 602(a)(26), requires that an applicant for AFDC benefits—typically, the mother—must assign to the state any accrued right to support "in [her] own behalf or in behalf of any other family member for whom [she] is applying" (42 U.S.C. (Supp. III) 602(a)(26)(A)(i)). The statute explicitly states that such an assignment is "a condition of eligibility for aid" (42 U.S.C. (Supp. III) 602(a)(26)).

The district court did not suggest, and it could not credibly be maintained, that this assignment provision effected an unconstitutional "taking" of child-support payments upon its enactment in 1975. The district court recognized that AFDC mothers prior to 1984 had been voluntarily including child-support recipients in the filing unit, and assigning their child support to the state, whenever the mother believed it

financially advantageous to do so. Rather, the court held that the assignment provision effected an unconstitutional "taking" in 1984, when Congress required that AFDC applicants include child-support recipients in the filing unit, and assign their child support to the state, even where the mother believes it financially *disadvantageous* to do so. As noted above (pages 13-15, *supra*), the child support thus assigned to the state is in effect "returned" to the family in the form of AFDC benefits. But the district court theorized that the assignment provision nevertheless has the effect of "taking" the separate income of the child and converting it (via AFDC payments) into a governmental subsidy for the rest of his family. The court characterized this as a taking of the child's private property for public use without just compensation.

The errors in the district court's analysis are so varied and numerous as to defy succinct summary. A catalogue of those errors, any one of which would require reversal of the court's holding on the Takings Clause issue, would include, at least, the following:

a. The premise of the district court's analysis is that North Carolina law affords a child who receives child support the "exclusive use of" and "unrestricted access to" that money (J.S. App. 67a, 69a (emphasis omitted)). As explained more fully by the State of North Carolina in its brief (86-564 Br. 11-14), this premise is incorrect. North Carolina law does provide that "[p]ayments for the support of a minor child shall be ordered to be paid to the person having custody * * * for the benefit of such child." N.C. Gen. Stat. § 50-13.4(d) (1984). But this provision means only that the child's custodian, as trustee, cannot derive personal profit from the child-support

payments; she must use them, rather, for the "benefit" of her child. And as North Carolina points out (86-564 Br. 12), state law allows the mother to exercise "discretion in determining how to utilize child support payments for the 'benefit' of the child." A custodial parent in North Carolina therefore may use child-support payments for the child's shelter, utilities, food, transportation and clothing—items that are ordinarily regarded as shared expenses of subsistence-level families that reside together. The child on whose behalf the support is paid has no state-law right to insist otherwise, nor can he claim such "unrestricted access" to the money as would constrain his mother to spend it exclusively on items that he alone will be permitted to use.

There is thus no basis for the district court's holding that the DEFRA filing unit provision "takes property" from child-support recipients by depriving them of "the right to enforce the fiduciary obligation that prohibited the mother from spending the money on anyone other than the designated child" (J.S. App. 67a). Under North Carolina law, a child-support recipient enjoys no such property right. The premise of the district court's Takings Clause analysis is thus erroneous.[9]

b. In discerning a "taking" of the child-support recipient's property, the district court viewed the assignment provision as mandating an involuntary transfer of funds from the child to the state, with

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[9] Because North Carolina law does not in fact preclude a custodial parent from using child-support payments to discharge essential shared family expenses, the district court's discussion as to whether Congress had "pre-empted" state law by requiring assignment of child support as a condition of the family's AFDC eligibility (J.S. App. 56a-60a, 65a-66a, 69a-70a) is entirely misplaced.

no quid pro quo in return. This mode of viewing the situation is completely misguided. As we have explained (pages 13-15, *supra*), the assignment provision in and of itself works no financial detriment to the AFDC family. That provision creates no substantive distinction between child support and other types of income. It simply establishes a different procedural mechanism—one that benefits the mother by shifting the burden of collection to the state—by which child support is taken into account in determining AFDC eligibility and benefit levels.

For purposes of constitutional inquiry, therefore, the analysis here should be exactly the same as if there were no assignment provision, and if Congress had simply mandated (as it did in 1984) that all co-resident siblings be included in the family filing unit, and that all countable income of such siblings (including child-support income, if any) be considered in determining the family's AFDC status. In that event, the effect of counting child support as "family income" would be to increase the family's income and reduce its AFDC grant, more or less dollar for dollar. It could not seriously be urged that this would effect a "taking" of property, since the government would have taken nothing from the child or from the family, but would simply have reduced its AFDC benefits because of a judgment that the family is less needy. And if there would be no "taking" in that situation, there cannot rationally be thought to be a "taking" when the same economic bottom line is produced by the assignment provision's operation.

The district court at one point suggested (J.S. App. 62a) that it would have found a "taking" even in the absence of the assignment provision, on the theory that mere consideration of child support as "family income" for AFDC purposes requires "the sacrifice of income" on the part of a child who "has

no legal duty to support his or her mother or half-siblings." This reasoning cannot logically be confined to child-support income, but would apply to *any* income received by a minor, whether child support, social security payments, or interest on bank accounts. That line of reasoning, if accepted, would disable Congress from establishing any sort of needs-based eligibility requirements for a family's receipt of public assistance. That plainly is not the law. See, *e.g.*, *Lyng* v. *Castillo*, slip op. 6 & n.7 (citing cases).

c. In discerning a "taking," the district court ignored the fact that participation in the AFDC program is entirely voluntary. That program confers sizable benefits on those who choose to participate, and it is clear that Congress may attach reasonable conditions to participation in such programs. When a person voluntarily complies with such conditions in order to gain access to public benefits that he desires, there is no "taking" of his property. As this Court observed in an analogous context in *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1007 (1984): "[A]s long as [the applicant] is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate Government interest, a voluntary submission of data by an applicant in exchange for the economic advantages of a registration can hardly be called a taking."

The statutory scheme that is challenged here imposes two relevant conditions on a family's eligibility for AFDC benefits. First, the family must include the parent and all co-resident siblings in the filing unit, and all countable income of such persons must be taken into account in determining the family's need for public assistance. 42 U.S.C. (Supp. III) 602(a)(38). Second, where such income takes the form of child support, the family must assign to the

state any accrued rights to such income. 42 U.S.C. (Supp. III) 602(a)(26)(A). If a family finds either of these conditions offensive, it is free to decline to participate in the AFDC program. If the family chooses to participate, however, it cannot be heard to complain of a "taking," since both of these conditions upon eligibility for AFDC benefits are "rationally related" to the "legitimate Government interest" (*Ruckelshaus* v. *Monsanto Co.*, 467 U.S. at 1007) of directing limited public welfare funds to those who are most in need.

d. Even if appellees' expectations of a continuing "right" to exclude selected co-resident siblings from the filing unit were thought to be a protected property interest, the operation of the AFDC program would not "take" this property within the meaning of the Fifth Amendment. Although this Court has on many occasions considered whether governmental action constitutes a taking, no simple formula for adjudging such claims has been established. *Connolly*, slip op. 13; *Penn Central Transp. Co.* v. *New York City*, 438 U.S. 104, 123-124 (1978). The Court has, however, identified three principal considerations that bear on the question whether governmental action that diminishes property rights amounts to a taking. These considerations are " 'the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations.' " *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. at 1005 (quoting *PruneYard Shopping Center* v. *Robins*, 447 U.S. 74, 83 (1980)).

Here, nothing in "the character of the governmental action" suggests a taking. To the contrary, the courts should be particularly hesitant to find a taking where the challenged governmental action adjusts the distribution of benefits in a social welfare program. The Court has repeatedly recognized that

Congress must retain great flexibility in deciding how finite public funds can best be allocated to provide for the general welfare. See, *e.g.*, *Bowen* v. *Public Agencies Opposed to Social Security Entrapment*, slip op. 10. Courts should thus "be extremely reluctant to * * * foreclose[] Congress's exercise of that authority." *Ibid.*; see *Bowen* v. *Owens*, slip op. 5-7. Subjecting legislation affecting public welfare spending to scrutiny under the Takings Clause might preclude Congress from playing its role in "adjusting the benefits and burdens of economic life" (*Penn Central*, 438 U.S. at 124). And it could permit recipients of assistance to fix benefits at their highest historic levels or permanently to preserve every option to maximize benefits.

Second, the "economic impact" of the challenged legislation (*PruneYard Shopping Center*, 447 U.S. at 83) is not so great as to effect a taking. Indeed, as we explained above, the AFDC filing-unit provision "takes" nothing; it simply sets a condition of eligibility in order to effect a more equitable distribution of AFDC benefits. But even if the district court were correct in concluding that the child-support recipient suffers a diminution in the value of his property, the court overstated the child's ability to dictate the use of his support payment and disregarded the numerous countervailing benefits (see pages 38-39, *infra*) that the statutory scheme confers upon the child and his family.[10]

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[10] After weighing the public purposes served by alleged "takings," this Court has sustained government actions that have had a far more severe "economic impact" than those alleged by appellees here. See, *e.g.*, *Goldblatt* v. *Hempstead*, 369 U.S. 590 (1962) (ordinance that effectively prohibited continuation of pre-existing business of sand and gravel mining); *United States* v. *Central Eureka Mining Co.*, 357 U.S. 155, 166-168 (1958) (government order prohibiting

Finally, neither the family filing-unit provision nor the assignment provision works any interference with appellees' "reasonable investment-backed expectations" (*PruneYard Shopping Center*, 447 U.S. at 83). Any expectation that appellees may have had that they were entitled to receive AFDC benefits on the same basis and at the same level as before was created as an incident to "the public acts of government" (*Reichelderfer* v. *Quinn*, 287 U.S. 315, 319 (1932)). Appellees thus entertained no more than a "unilateral expectation or an abstract need," a claim that is entitled to no protection under the Fifth Amendment. *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 161 (1980). See *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. at 1005-1006.

e. Even if the filing-unit provision were thought to take appellees' property for public use, the district court failed to consider whether the benefits conferred on AFDC families by the statutory scheme amount to "just compensation." If a mother decides to apply for AFDC benefits, that decision confers significant advantages on all members of her family, including any child who may be entitled to support payments. That decision removes from her shoulders and from the shoulders of her child most of the consequences of child-support delinquency.[11] After the

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operation of private gold mines for two years); *Miller* v. *Schoene*, 276 U.S. 272, 279 (1928) (government order to destroy cedar trees that threatened to inflict disease on nearby commercial apple orchard).

[11] As of early 1984, 8.7 million women headed families with minor children whose fathers were not living in the household; of those women who had been awarded child support, 25% received no payments at all, and another 25% received less than the full payments to which they were entitled. Bureau of the Census, U.S. Dep't of Commerce, *Child Support and Alimony: 1983*, at 1 (July 1985).

child-support rights are assigned to the state, the family receives an AFDC grant that reflects the needs of the child regardless of the state's ability to collect from the absent father. Thus, the child's income (and derivatively, the family's) is not subject to wide monthly fluctuations depending on whether support payments are made on time and in full.[12]

The legislative scheme also removes from the AFDC recipient most of the burden of pursuing non-custodial parents who fail to satisfy their support obligations. That task falls to the state (see 42 U.S.C. (Supp. III) 666), which has at its disposal the enhanced enforcement mechanisms enacted by Congress contemporaneously with DEFRA. Child Support Enforcement Amendments of 1984, Pub. L. No. 93-378, 98 Stat. 1305 *et seq.* An additional benefit flowing from the DEFRA amendments is that children newly included in the AFDC filing unit are automatically entitled to receive free medical care under the Medicaid program (see 42 U.S.C. (Supp. III) 1396a(a)(10)(A)(i)(I)). And, as we have noted (pages 14-15, *supra*), Congress attempted to mitigate any economic disadvantage that the new filing-unit rules might work by providing that the first $50 of monthly child support collected by the state is to be paid directly to the child's caretaker relative, which $50 is to be disregarded in determining the family's AFDC eligibility. 42 U.S.C. (Supp. III) 602(a)(8)(A)(vi) and 657(b)(1).

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[12] Only the $50 disregard (see page 14, *supra*) is dependent upon the state's ability to collect from the non-custodial parent. Thus, even in months when the state cannot collect, the family will not fall below the state's maximum payment level for a family of that size and circumstance. And when support payments are timely made to the state by the non-custodial parent, the state will pay the $50 increment to the family on top of its full AFDC grant.

We recognize that it may seem odd to describe the benefits conferred by the AFDC program as "compensation." But it is in our view no less odd to describe the burdens imposed as conditions on participation in the AFDC program as a "taking." And if the seeming incommensurability of the benefits and the burdens makes it difficult to know if the "compensation" is "just," that difficulty suggests not so much an indeterminate conclusion as an erroneous point of departure. The district court's original and basic error was its use of the Takings Clause to resolve disputes about the proper distribution of public welfare benefits.[13]

C. The Family Filing-Unit Provision Does Not Violate The Due Process Clause Or The Equal Protection Component Of The Fifth Amendment

1. *The Statutory Scheme Establishes A Rational Basis For Calculating AFDC Eligibility And Benefits*

It is well settled that social welfare legislation need withstand only a minimal level of scrutiny in order to survive due process and equal protection challenge. See, *e.g.*, *Atkins* v. *Parker*, 472 U.S. 115, 129-130 (1985); *Schweiker* v. *Hogan*, 457 U.S. 569

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[13] Even if the challenged governmental action had constituted a taking without just compensation, appellees would not necessarily be entitled to injunctive relief. See *United States* v. *Riverside Bayview Homes*, slip op. 5-6 (quoting *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. at 1016) ("in general '[e]quitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to a taking' "). See *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 126-127 & n.16 (1974); *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 94 n.39 (1978).

(1982); *Schweiker* v. *Wilson*, 450 U.S. 221 (1981); *Califano* v. *Jobst*, 434 U.S. 47 (1977); *Weinberger* v. *Salfi*, 422 U.S. 749 (1975). Congress has wide latitude in social welfare legislation to "concentrate limited funds where the need is likely to be greatest" (*Califano* v. *Boles*, 443 U.S. 282, 296 (1979)). A classification created by federal legislation will accordingly be upheld so long as there is a rational basis for the congressional choice and the classification is not "patently arbitrary." *Califano* v. *Aznavorian*, 439 U.S. 170 (1978); *Bowen* v. *Owens*, slip op. 5-8; *Flemming* v. *Nestor*, 363 U.S. 603 (1960).

The filing-unit provision that Congress adopted in 1984 is a rational means of carrying out Congress's conclusion that families whose members have access to additional sources of income have less need for government assistance than families without access to such income. That conclusion flowed from Congress's legislative findings that family members who live in the same household pool their resources and share their expenses. As this Court noted last Term in *Lyng* v. *Castillo*, "close relatives sharing a home —almost by definition—tend to purchase and prepare meals together" (slip op. 7). Congress relied here on the same proposition that this Court found rational in *Castillo*: that family members seeking to meet their subsistence needs share expenses and, therefore, at least indirectly, share their respective incomes.[14] Having concluded that all income received by family members residing in the same household should be considered in determining the family's eligibility for AFDC assistance, Congress implemented budget re-

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[14] The validity of this congressional finding is borne out by the record in this case. See, *e.g.*, J.S. App. 75a (quoting Thomas Dep. Tr. 35); Medlin Dep. Tr. 42; Miles Dep. Tr. 19-20; Jeffreys Dep. Tr. 17; Waters Dep. Tr. 29, 32, 41-42.

duction plans that rationally cut benefits most to those who are, because of their additional sources of income, relatively speaking least needy.[15]

In this complex area of social policy, any effort to draw lines among the needy is difficult and is inevitably subject to criticism by some. Wherever the line is drawn, those who narrowly fail to qualify, or those who find their benefits marginally reduced, remain "needy" by comparison with more affluent members of our society. Cf. *Schweiker* v. *Hogan*, 457 U.S. at 589-592; *Lyng* v. *Castillo*, slip op. 2. But it is by no means clear that the allocation of public benefits that appellees prefer would be any more just or equitable than the allocation that Congress chose in 1984. On appellees' view, for example, the AFDC program should treat a family of three with no monthly income as being identical to a family of six with $600 of monthly income, provided that the $600 takes the form of child support. A moral philosopher might well ask why those two families should receive the same level of public assistance, despite the fact that the latter has $600 more than the former with which to buy clothes, pay rent, and purchase groceries. As this example shows, the benefits system that would exist under the decision below would not eliminate harsh consequences. It would simply shift the place at which the line is drawn.

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[15] AFDC is only one of many programs, at the federal and state levels, that provide assistance to the impoverished. The record in this case shows that appellees, in addition to their AFDC grants, obtained assistance under various other programs. See, *e.g.*, Thomas Dep. Tr. 10-15 (food stamps, Medicaid, energy assistance, rent assistance); Jeffreys Dep. Tr. 9, 11-12 (Medicaid, food stamps); Miles Dep. Tr. 9, 14-15 (food stamps); Waters Dep. Tr. 9, 13, 17-18, 27, 35, 41, 44 (Pell grant, energy assistance, subsidized housing, day care services, food stamps, W.I.C. program).

2. *The Family Filing-Unit Provision Does Not Burden Fundamental Rights*

The district court refused to apply the "rational basis" test that this Court has repeatedly used in considering constitutional challenges to federal welfare legislation.[16] Instead, the court below subjected the statute to "more rigorous" scrutiny because of a supposition that the statute burdens the "fundamental associational rights" of child-support recipients

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[16] See, *e.g.*, *Lyng* v. *Castillo*, *supra* (rejecting an equal protection challenge to statutory distinction in the Food Stamps Program between parents, children and siblings who live together and more distant relatives or groups of unrelated persons who live together); *Bowen* v. *Owens*, *supra* (rejecting an equal protection challenge to distinction in the Social Security Act between remarried widowed spouses and divorced widowed spouses); *Schweiker* v. *Hogan*, 457 U.S. 569, 588-593 (1982) (rejecting an equal protection challenge to federal limitations that result in higher Medicaid benefits to recipients of Supplemental Security Income (SSI) than to persons who are self-supporting); *Schweiker* v. *Wilson*, 450 U.S. at 230-239 (rejecting an equal protection challenge to federal limitations on payment of SSI benefits to certain inmates of public institutions); *Califano* v. *Aznavorian*, 439 U.S. 170, 174-178 (1978) (rejecting an equal protection challenge to federal limitations on payment of SSI benefits to persons who reside outside the United States for a period greater than 30 days); *Mathews* v. *De Castro*, 429 U.S. 181 (1976) (rejecting an equal protection challenge to a federal limitation on payment of Social Security benefits to the divorced wives of retirees); *Mathews* v. *Lucas*, 427 U.S. 495, 503-516 (1976) (rejecting an equal protection challenge to a federal limitation on payment of Social Security benefits to surviving illegitimate children who are unable to establish dependency on the putative parent); *Weinberger* v. *Salfi*, 422 U.S. 749, 767-785 (1975) (rejecting constitutional challenge to provisions of the Social Security Act that imposed a nine-month duration-of-relationship requirement for survivor's benefits).

(J.S. App. 73a). As this Court has recently held, however, a statutory classification does not "burden a fundamental right" unless it " 'directly and substantially' interfere[s] with family living arrangements." *Lyng* v. *Castillo*, slip op. 3 (quoting *Zablocki* v. *Redhail*, 434 U.S. 374, 386-387 & n.12 (1978)).

The AFDC family filing-unit provision, like the statutory definition of "household" in *Lyng* v. *Castillo*, does not directly and substantially interfere with a family's decision about its living arrangements.[17] Just as the Food Stamp provision at issue in *Castillo* did not "order or prevent any group of persons from dining together" (slip op. 4), the AFDC filing-unit provision does not prevent any group of persons from living together. Indeed, it does not even prevent a group of persons from living together and collecting AFDC benefits. Cf. *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528, 529 (1973). The statute simply requires that family members who choose to live together, and who choose to apply for AFDC benefits, must apply for those benefits as a unified family filing unit. While this statutory modification will result in reduced AFDC benefits for some families, and while some families may conceivably find other living arrangements—

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[17] In denying the government's motion for reconsideration, the district court sought to distinguish this case from *Lyng* v. *Castillo*. It stated (J.S. App. 108a-109a) that the present case "bear[s] a greater resemblance to *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973) than to *Lyng* because the family filing-unit provision renders an entire family ineligible for needed benefits." Even if the court's description of the DEFRA filing-unit provision were accurate, which it is not, *Moreno* does not support the application of "heightened scrutiny" here. Both *Moreno* and *Lyng* were decided under the "rational basis" standard, as the Court in the latter decision emphasized. See *Lyng* v. *Castillo*, slip op. 4 (quoting *Moreno*, 413 U.S. at 533).

such as a child's possible decision to live with her father rather than to live with her mother and receive child support (J.S. App. 78a)—economically more advantageous as a result, those consequences are the consequences that flow from any reduction in benefit levels and they do not constitute an impairment of fundamental family rights. See *Califano* v. *Jobst*, 434 U.S. at 58 (Social Security provisions terminating a child's support upon marriage do not violate equal protection principles even though they "may have an impact on [the child's] desire to marry, and may make some suitors less welcome than others").[18]

Relying on largely anecdotal evidence of hardships faced by certain AFDC families, the district court held that the DEFRA filing-unit provision is unconstitutional on its face. But this Court has cautioned that "the validity of a broad legislative classification is not properly judged by focusing solely on the portion of the disfavored class that is affected the most harshly by its terms." *Schweiker* v. *Hogan*, 457 U.S. 569, 589 (1982). Congress based the DEFRA amend-

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[18] For the reasons set forth in the text, "heightened scrutiny" cannot be justified here on the theory that the AFDC filing-unit provision burdens "fundamental family rights." For the reasons set forth in *Lyng* v. *Castillo*, moreover, heightened scrutiny likewise cannot be justified here on the theory that the AFDC filing-unit provision creates a "suspect" or "quasi-suspect" classification. Family members are not a "suspect class." Families that receive child support are treated no worse for AFDC purposes—in fact, they are treated better (see pages 11-12, 39 & n.12, *supra*)—than families that receive other types of countable income. And, finally, child-support recipients who live with needy families are not situated similarly to child-support recipients who live in other circumstances. *Baldwin* v. *Ledbetter*, 647 F. Supp. at 636; see *Gorrie*, slip op. 27, 29-30; *Hogan*, 457 U.S. at 590.

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ment on an unremarkable observation drawn from human experience, an observation borne out by the record in this case (see note 14, *supra*), that family members who reside in the same household, family members who are bound together by close and lasting emotional ties, are likely to share their resources and responsibilities. Although appellees apparently would prefer that Congress allocate public benefits on the basis of inquiries into each particular family's spending habits and individualized needs, "[s]uch a system is neither feasible nor constitutionally mandated." *Brown* v. *Heckler*, 589 F. Supp. 985, 995 (E.D. Pa. 1984). See *Lyng* v. *Castillo*, slip op. 5-6 (footnotes omitted) ("the cost-ineffectiveness of case-by-case verification of claims that individuals ate as separate households unquestionably warrants the use of general definitions in this area"); *Bowen* v. *Owens*, slip op. 6 (original quotation marks omitted) ("[i]n determining who is eligible for such benefits, the scope of the program does not allow for individualized proof on a case-by-case basis"); *Califano* v. *Jobst*, 434 U.S. at 53 ("[g]eneral rules are essential if a fund of this magnitude is to be administered with a modicum of efficiency, even though such rules inevitably produce seemingly arbitrary consequences in some individual cases"); *Dandridge* v. *Williams*, 397 U.S. at 485 (quoting *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69-70 (1913)) (" 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' ").

Ultimately, the district court's criticism of the family filing-unit provision is premised on its belief that the mechanism chosen by Congress will not achieve its goals (see J.S. App. 85a). The Constitution, however, empowers Congress, not the courts, to make "democratic choices among alternative solutions to

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social and economic problems" (*Schweiker* v. *Wilson*, 450 U.S. 221, 230 (1981)). As in the case of any statutory provision, there might be room to debate the wisdom of Congress's choice. But "[g]overnmental decisions to spend money to improve the general public welfare in one way and not another 'are not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment.'" *Mathews* v. *De Castro*, 429 U.S. 181, 185 (1976) (quoting *Helvering* v. *Davis*, 301 U.S. 619, 640 (1937)).

CONCLUSION

The judgment of the district court should be reversed and the case remanded with instructions to vacate the injunction and to dismiss the complaint and the third-party complaint.

Respectfully submitted.

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